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ANNUAL REPORT

1 APRIL 1990 – 31 MARCH 1991

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Alberta

HUMAN RIGHTS COMMISSION

93-02234/

"WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; and

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry or place of origin; and

... it is fitting that this principle be affirmed by the Legislature of Alberta in an enactment whereby those rights of the individual may be protected."

FROM THE PREAMBLE TO THE INDIVIDUAL'S RIGHTS PROTECTION ACT

Cover photo: 1991 Alberta Human R ts Award

ANNUAL REPORT

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Alberta

HUMAN RIGHTS COMMISSION

Alberta

LABOUR

Office of the Minister

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October, 1992

The Honourable Dr. David Carter
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, Alberta

Dear Dr. Carter:

I have the honour to submit the Annual Report of the Alberta Human Rights Commission for the fiscal year ended March 1991 and 1992. The report is submitted in accordance with section 18(2) of the Individual's Rights Protection Act.

Yours truly,

Elaine McCoy

Elaine McCoy Q.C.
Minister of Labour

Alberta
HUMAN RIGHTS COMMISSION

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October 1992

The Honourable Elaine McCoy, Q.C.
Minister of Labour
103 Legislature Building
Edmonton, Alberta

Dear Ms McCoy:

I am pleased to submit to you, the Minister responsible for the administration of the Individual's Rights Protection Act, the Annual Report of the Alberta Human Rights Commission for the Fiscal Year 1990-91 and 1991-92 for tabling before the Legislative Assembly.

Yours truly,

Dr. Raffath Sayeed
Acting Chief Commissioner

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CHIEF COMMISSIONER'S REPORT

We are combining two annual reports in order to catch up following a period during which the Commission's caseload expanded dramatically at a time when resources were limited.

During the fiscal years 1990-91 and 1991-92 the Commission underwent profound structural change.

1. Effective January 1,1991, the leadership of the Commission was assigned full time status at the Deputy Minister level. Before my appointment, the Commission was led by a part time Chairman. The change in designation from Chairman to the gender neutral Chief Commissioner was included in amendments to the Individual's Rights Protection Act in the spring of 1990. Under the new arrangement, the Chief Commissioner is the Chief Executive Officer and the Executive Director is the Chief Operating Officer of the Commission.

2. Members of the Commission played a much more active public role in the promotion and advocacy of the principles of human rights, and in developing policy directions. In previous regimes, Commissioners had not been encouraged to make public statements, and had little influence on the direction of the organization.

During the reporting period, the work of Commissioners became more visible, more understandable, and members were more accessible to the public and the media.

3. An internal review was begun in 1991 with the objective of reducing the layers of internal bureaucracy, flattening the organization chart. Human Rights Officers were redesignated as Human Rights Consultants, and given more power and flexibility to manage their caseloads. An informal complaint resolution process was more clearly defined and expanded — shortening the time necessary to resolve complaints in which there was fundamental agreement on the facts.

There were a number of accomplishments during the period under review that deserve to be highlighted.

The use of the "good offices" of the Chief Commissioner was instrumental in resolving a number of key complaints, in some cases before they escalated into more acrimonious confrontations or litigation. The cooperation of Mayor David Carpenter of Lethbridge helped to quietly and successfully resolve a discrimination complaint involving a Native organization. All parties were satisfied with the outcome. Similarly, the cooperation of Dr. Larry Ohlhauser, Registrar of the Alberta College of Physicians and Surgeons helped, not only to resolve a number of complaints involving foreign trained physicians, but resulted in a new regime which provided a "level" playing field for doctors trained in other countries.

The replacement of a private annual dinner by an innovative, public, people-centered celebration of Human Rights Day has substantially raised public involvement in the December 10 celebration. Inaugurated in Edmonton in 1990 with Lieutenant Governor Helen Hunley in attendance, the ceremony was also held in a number of classrooms and school auditoria, community halls and civic centres. Designed as a simple way for large or small groups to reaffirm their commitment to the principle that "All human beings are born free and equal in dignity and rights," the ceremony has been especially popular in schools. The Commission hosts a ceremony each December 10 during which it announces it's annual Human Rights Awards. The 1991 ceremony was held in the Atrium of the Calgary City Hall with Mayor Al Duerr in attendance.

Details of the Human Rights Awards are presented elsewhere in this report.

By the end of the 1991-92 fiscal year, the Commission's plans to celebrate the 20th anniversary, May 5, 1992, of the introduction of the Individual's Rights Protection Act, were finalized. They included production of a series of posters on the theme "MAKE SECOND CLASS CITIZENSHIP A THING OF THE PAST."

In January, 1992, the Commission announced its decision to call on the Government of Alberta to include sexual orientation as a protected ground under its legislation. This was followed by a research project to determine the level of complaints the Commission might deal with in the event the legislation was changed as recommended.

Also reviewed elsewhere in this report is the Commission's involvement in a number of Boards of Inquiry. During the reporting period the Commission made some progress in improving public understanding of the process. Boards of Inquiry, while mandated by the Individual's Rights Protection Act, are not the creatures of the Commission. Appointed by the Minister Responsible for Human Rights at the direction of the Commission, they operate independently under the Public Inquiries Act. The Commission continues to make it clear that decisions of Boards of Inquiry are not decisions of the Commission.

One Board of Inquiry deserves special comment. On September 8,1990, an "Aryan Fest" sponsored by the Alberta Church of Jesus Christ Christian Aryan Nations, saw the public burning of a 10 metre cross, and a series of accompanying interactions between members of the Aryan Nations group and the public. The Attorney General of the Province of Alberta concluded that there was

insufficient evidence to lay charges under the criminal code.

The Commission decided, even though counsel advised that the issue of jurisdiction was not clear, to accept complaints against the Aryan Nations, and to proceed with an investigation of the event. The subsequent Board of Inquiry, Chaired by Dean Timothy Christian of the Faculty of Law of the University of Alberta, rendered a landmark decision which clarified and secured the role and mandate of the Commission.

First, the Board of Inquiry agreed that the Commission was within it's mandate to investigate complaints against the cross burning. By doing so, it established that Section two of the Individual's Rights Protection Act, which deals with discrimination through signs, symbols, notices and other representations, stands alone and is not tied to other sections of the legislation. This means that discriminatory symbols do not need to be related to employment, tenancy, or public services, other areas of the Commission's jurisdiction. The decision is important in that it clarifies and strengthens the Commission's jurisdiction under present legislation. Decisions in other provinces had suggested that their Human Rights Commissions were limited in their ability to investigate complaints of discrimination in signs, symbols, and notices.

Second, the Board agreed with the Commission that the public displays of symbols like swastikas and Nazi flags, as well as the burning of crosses, goes far beyond the freedom of speech and association guaranteed by human rights legislation. The Aryan Fest, described by the Board of Inquiry as " a shocking event in the history of Alberta," was an act of discrimination clearly prohibited by the Alberta Individual's Rights Protection Act.

The cost of the inquiry was in the vicinity of $530,000, far less than the $700,000 to $1,000,000 dollar figures reported in the media.

An important advance in the management of Boards of Inquiry was the separation of their administration from the Commission. In previous regimes, these Boards were administered by the Commission. By agreement, Boards of Inquiry are now administered by the Deputy Minister's office, acting as agent for the Minister under whose auspices the Boards operate. Costs of Boards of Inquiry are recovered by special warrant.

The earlier arrangement, which saw the Commission paying Board Chairs, was tantamount to counsel on one side of a dispute paying the judge. A more secure arrangement needs to be developed to separate Boards of Inquiry from the operations of the Commission. In other provinces this is accomplished by including the costs of Boards in budgets separate from that of the Human Rights Commission.

Substantial progress was made toward making the Commission a more autonomous agency. Under previous regimes the Commission had virtually acted as a division of the Department of Labour. But to fulfill both public expectations and its legislative mandate, the Human Rights Commission must act, and be seen to act, at arms length from the government of the day. In order to fully achieve this goal, the Chief Commissioner and the Commissioners believe that the Commission needs to be made responsible directly to the provincial legislature. The mechanism could be similar to that governing the Office of the Ombudsman, the Chief Electoral Officer, and the Auditor General, or some other approach might be developed. But it is clear that there is a down side to having the Commission report to a Minister of the Crown. Among these is the possibility and perception of a conflict of interest when a department of the government is the respondent in a discrimination complaint.

There are already moves being taken in other provinces to place Human Rights Commissions at arms length from the government. I hope that Alberta can be the first, not the last, to make this necessary advance in further securing the human rights of its citizens.

Fil Fraser
Chief Commissioner

EXECUTIVE DIRECTOR'S REPORT

On April 17,1991 I began my duties as Executive Director. On my arrival, the Commission was continuing to experience historically high claim loads and the stress of continued public scrutiny. Education staff continued to carry claim loads and management were realizing that they, too, would be carrying cases before long. Human resource allocation needed to be reassesed. The Commission needed an expenditure monitoring system to ensure that the budget, although limited, was managed so that Commission goals could be achieved. Of particular difficulty here, was integrating the costs of Boards of Inquiry into a very small operating budget and still maintaining services. 1991-92 became a year of reassessment and planning.

Over the summer months, I met with regional office staff frequently, reviewing policies and procedures and the way the offices operated. I also spoke to clients, other agencies, and resource people. It became apparent that there was a need for standardization in office practice and that some organization changes were in order. It also became apparent that staff were generally well regarded by the public that they served and by agencies that worked in the same field.

In October, all staff met for a two day planning retreat in Red Deer. The net result was the discussion of a new model that would flatten the organization and develop teams in the regional offices. In addition, the case tracking system was reviewed and an implementation schedule established. As a result of this, a three year corporate plan was produced.

There were two major achievements in the year. The first was recognition by the Provincial Treasurer that Boards of Inquiry would be funded by special warrant. This meant that operating funds allocated to the Commission could be designated for Commission activities in their entirety and allowed for more certain planning. The second was the approval of the corporate plan by the Commissioners at their January 9 meeting. The corporate plan was scheduled for implementation starting April 1,1992.

Wendy Kinsella
Executive Director

REPORT FROM REGIONAL OFFICES

APRIL 1, 1990 – MARCH 31, 1992

The Calgary and Edmonton regional offices face an ever increasing demand for service in both the complaint investigation and education areas. To meet this demand, we have learned to work more efficiently through the effective use of advanced technology and better utilization of our time and resources. It was a challenging time for employers, service providers and all Albertans involved in the development of human rights.

Staff continue to employ mediation at all possible points in the processing of a complaint. In particular, the practice of mediation or "informal" case processing at the very start of a complaint, continues to be highly successful. Feedback from parties involved has been extremely positive. In one case, a long term employee whom had slowly lost his vision was ultimately reasonably accomodated by his employer. In another instance, a woman who had been refused work at an out of town job site because there were no on site facilities for female staff, was ultimately offered lost wages, transportation costs, and a letter of commitment to gender equality in hiring from the employer concerned. In the area of public services, a Native woman claimed racial bias by her social worker. She claimed that the social worker's attitude affected her overall access to the full benefits and services of the department. The department manager responded promptly by listening to the woman's claims and assigning her to a new social worker, increasing her benefits, and providing an apology. In the area of age discrimination in employment, an employee was forced to retire a year earlier than he wished because of his age. Performance was not a concern. The employer chose to offer a substantial financial settlement in spite of the uncertainty of the law around the

issue of mandatory age retirement. The offer was accepted. Informal case processing remains an essential tool for expediting amicable resolutions for all parties.

As a result of the significant inclusion of mental disability as a protected ground in the Individual's Rights Protection Act in May, 1990, the Commission received a variety of complaints but not a great number. In the area of Public Services, three complaints specifically involved the issue of integration in the school system. All three complaints resulted in the individual schools accepting the students into mainstream classes in a manner satisfactory to the individual students' needs. In another complaint involving a man with a mental disability, mediation resulted in a satisfactory resolution to a damaged employment relationship. The employer offered the man compensation for all lost wages and the man was satisfied with the outcome.

There has been a substantive increase in activity in rural Alberta. Part of this increase can be attributed to the Commission holding its regular monthly meeting in various rural settings throughout Alberta. Public participation has been encouraged and a 1-800 line established, allowing all Albertans easy access to the Commission. Another factor is the positive image built over the years, instilling confidence that the Commission is here to provide positive action when and wherever the need arises.

Allegations of sexual harassment continued to make up a large number of the complaints received. The majority of these complaints were resolved through mediation. A number of complaint resolutions were quite encouraging, creative, and demonstrated leadership. In certain cases the alleged harasser was banned from the workplace. For example, a spouse was told not to call the worksite under any circumstances as she had been interfering with the work of a female co-worker of her husband. In other cases the person harassed was given solid follow up support from the employer in the form of approved time off for medical and personal development assistance.

An encouraging development is the action numerous employers and service providers have taken toward instituting a sexual harassment policy. Viewed as being part of good business and human resource practice, numerous establishments have approached the Commission for assistance in developing and implementing policies to help provide an environment free from sexual harassment. The policies have been designed to help individuals recognize the problem associated with sexual harassment, to identify when it occurs, and to effectively deal with it in a preventive manner.

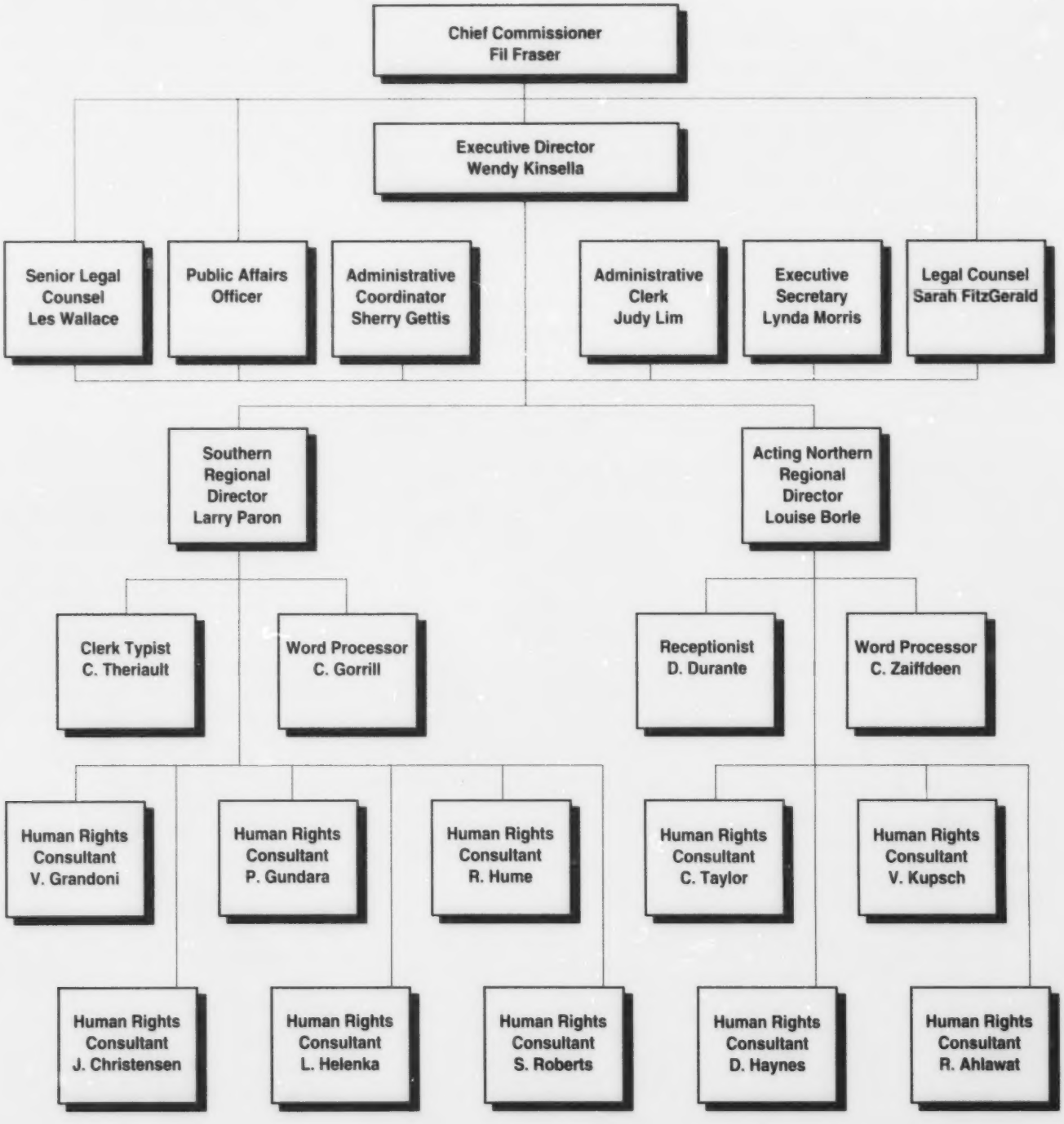
With the overall increase in caseload, education resources were reduced accordingly. Resources were focused on training those individuals who would then return to their businesses and train their own people on developments in human rights law. An agreement was reached to provide this type of educational program to provincial government departments. Due to notable community interest, a unique education effort was also made in the area of sexual harassment. In November, 1990, a Symposium on Sexual Harassment co-sponsored with the Women's Secretariat was held. It was almost entirely composed of presenters and audience from the business and post-secondary education communities. It was extremely well received and high interest was expressed for a follow-up event aimed at the practical drafting of policy.

Overall, Commission staff have experienced exciting developments with the adoption of new technology, enhanced legislation, new jurisprudence, and an increased demand for public service at all points in the agency.

Louise Borle
Senior Human Rights Consultant

Pardeep Gundara
Senior Human Rights Consultant

ORGANIZATIONAL CHART 1991/92



The Commission's head office is located in Edmonton and houses the Chief Commissioner, Executive Director, and support staff. The office is separate from the Commission's regional offices, where most contacts between the public and the Commission staff occur. The Northern Regional Office in Edmonton is responsible for the province north of Red Deer, the Southern Regional Office in Calgary is responsible for the Commission activities in Red Deer and the southern half of the province.

MANDATE

Through the directives outlined in the **Individual's Rights Protection Act** the Alberta Human Rights Commission follows a two-fold mandate:

1) to promote and safeguard the spirit and principles embodied in the Act.
2) to protect Albertans from acts of discrimination.

The Commission fulfils this mandate through public education initiatives and investigation of complaints of discrimination.

The purpose of the Act is to offer all Albertans an equal opportunity to earn a living, find a place to live, and enjoy public services and accommodations, without discrimination.

The Individual's Rights Protection Act, first passed in 1972, protects Albertans in four main areas:

- employment,
- tenancy,
- public services and accommodation,
- signs and notices.

Within these areas, it is a contravention of the Act to discriminate against any person on the basis of race, colour, gender, religious beliefs, physical disability, mental disability, ancestry or place of origin.

As well, in the area of employment it is a contravention of the Act to discriminate against any person on the basis of age, pregnancy or marital status.

Further, in the area of signs and notices, age is a ground protected from discrimination.

IT IS THE FUNCTION OF THE COMMISSION

(a) to forward the principle that every person is equal in dignity and rights without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry or place of origin,

(b) to promote an understanding of, acceptance of and compliance with this Act,

(c) to research, develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry or place of origin and

(d) to encourage and co-ordinate both public and private human rights programs and activities.

From section 16(1) of the Individual's Rights Protection Act

THE PROCESS

When a complaint is filed on the basis of one of the protected grounds, the Commission must first determine whether it has jurisdiction and whether there are reasonable grounds to believe discrimination has occurred. The complainant is required to sign a complaint form before an investigation can begin. The respondent, or party against whom the complaint is lodged, is notified of the complaint before any further action is taken.

The Commission attempts to negotiate a resolution, seeking remedies that will, to the greatest extent possible, restore the individual to the same position he or she was in before the act of discrimination took place. However, the Act is not a penal statute. The Commission does not have power to order an employer, landlord, or service provider to pay a fine or agree to a settlement. Neither can the Commission establish guilt or innocence in a complaint. Its function is remedial, not punitive.

Many cases can be dealt with in an informal manner, with the consent of the parties involved. The aim is to resolve the complaint as soon and as easily as possible. The complaint can be settled or concluded at any stage of the process. However, if mediation efforts are unsuccessful, the complaint will be formally investigated.

If it is determined that the Act is contravened, Commission consultants attempt to negotiate a settlement. Settlements can vary from letters of apology to cash settlements for lost wages.

In most cases, complaints are satisfactorily settled between the complainant and the respondent.

BOARDS OF INQUIRY

If the Commission has found a complaint to have merit and is unable to settle the complaint, the Individual's Rights Protection Act provides for it to direct the Minister of Labour to appoint a Board of Inquiry, a quasi-judicial body. A Board of Inquiry is separate and distinct from the Commission. At this level, the Commission has carriage of the complaint before the Board of Inquiry. Proceedings are of a civil, rather than criminal nature. The Board has the powers of a Commissioner under the Public Inquiries Act.

A Board of Inquiry hears evidence on behalf of the parties, which may include expert witness evidence, and will issue a decision. The Board may:

- dismiss the complaint, if it is found to be unjustified,
- if it finds that a complaint is justified, order the person against whom the finding was made to cease the action complained of and to refrain from committing the contravention in the future
- make available the rights, opportunities, and privileges which the complainant was denied
- order the offending party or parties to compensate the person(s) discriminated against for lost wages or expenses,
- take any other action it considers proper to restore the person discriminated against to the position he or she was in prior to the discrimination.

If the Board makes an award, the decision is entered with the Court of Queen's Bench and becomes enforceable in the same manner as an order of the Court.

Decisions of the Board can be appealed to the Court of Queen's Bench within 30 days of receiving the decision.

The following cases were before Boards of Inquiry, during the fiscal years from April 1, 1990 to March 31, 1991, and from April 1, 1991 to March 31, 1992.

1. Susan Parcels vs Red Deer General & Auxiliary Hospital and Nursing Home, District No. 15, Alberta Hospital Association and United Nurses of Alberta, Local 2

Chair: Anne deVillars

This was the first human rights Board of Inquiry to examine the implications of the 1989 Supreme Court of Canada decision in *Brooks vs Canada Safeway* for employment benefit plans.

Susan Parcels, a nurse at the Red Deer Hospital, was required to set the dates of her maternity leave in advance and to prepay 100 per cent of the cost of employment benefits normally cost-shared with the employer in order to maintain coverage during her maternity leave. This policy reflected the collective agreement between the Alberta Hospital Association and the United Nurses of Alberta.

Ms. Parcels filed her complaint of employment discrimination on the basis of pregnancy on June 7, 1989. A Board of Inquiry was appointed in November, 1989. By agreement the inquiry was expanded beyond the specific facts of Ms. Parcels' complaint to comprehensively examine the treatment of pregnant employees in employee benefit plans. The Board heard seven days of evidence and argument and on June 19, 1991 issued its decision upholding Parcels' complaint.

The Board of Inquiry held that in light of the *Brooks* decision that pregnancy is a "valid health-related reason for absence from the workplace," it was discriminatory to require pregnant employees to prepay 100% of premiums when sick employees were not so required. It held that maternity leave is a composite of health-related and voluntary leaves and pregnant employees must be treated like sick employees during the portion that is health-related. The right to be treated like a sick employee applies whether the health-related absence occurs pre-delivery or post-delivery. It decided that an employee who starts a maternity leave without a health-related reason does not thereby waive benefits for the entire maternity leave. Finally, it decided that employers may defray some of the cost of providing equal treatment by entering into Supplemental Unemployment Benefit (SUB) Plans approved by the federal government, but only if this does not result in continued discrimination.

The Hospital and the Alberta Hospital Association appealed portions of the Board of Inquiry decision to the Court of Queen's Bench. See *Red Deer General & Auxiliary Hospital and Nursing Home, District No. 15 v. Parcels, infra.*

2. Harvey Kane et.al. vs Church of Jesus Christ Christian-Aryan Nations, Terry Long representing Members of the Church, Terry Long and Ray Bradley

Board: T.J. Christian, Chair; Judge C. L. Daniel; Dr. K.E. Vik

On September 8, 1990, Terry Long and persons associated with the Church of Jesus Christ Christian-Aryan Nations attended an event at the farm property of Ray Bradley near Provost, Alberta. In addition to a cross-burning, the Church displayed a Swastika flag and "KKK White Power" sign. Newspaper and television media reported on these events.

Six individuals came forward in December 1990 and January 1991 to lay complaints under s. 2 of the IRPA. This section prohibits discrimi-

natory notices, signs, symbols and emblems. The Commission called for a Board of Inquiry which was appointed June 12, 1991. The 16-day inquiry commenced July 24, 1991. Twenty-nine witnesses were called. The board issued numerous rulings during the proceedings. Final argument concluded December 10, 1991. The Board rendered its decision February 28, 1992.

The Board upheld the complaints in all aspects. The sign, flag and burning cross were "signs" and "symbols" displayed to the public. They were intended to and had the effect of discriminating against classes of persons based upon race, religious beliefs, colour, ancestry or place of origin. The Board found the restriction imposed on the free expression of opinion by s. 2 to be warranted. Moreover, the s. 2(3) defence available to groups sharing the same political or religious beliefs could not be used by this "Church." The signs and symbols were in any event, "derogatory, offensive or otherwise improper." The Board ordered Ray Bradley, Terry Long and the Church to refrain from further public display of such discriminatory signs and symbols.

The Commission asked for costs against the named respondents. We await the Board's decision on this matter.

3. Paulene Splett vs Sum's Family Holdings Ltd. and Paul Hoy

Chair: Brad McManus; Members: Yessy Byl, Dr. John More

Paulene Splett, a cook in a Ponoka restaurant, filed a complaint with the Commission on October 11, 1988 alleging that she was sexually harassed on the job by her supervisor. A Board of Inquiry was appointed on March 16, 1990. After appointment of the Board, the Commission applied to add the supervisor as a party to the complaint. After hearing evidence and argument the Board issued its decision on September 27, 1990 upholding the complaint. The Board held that it had the power to add a party to a complaint after expiry of the 6-month limitation for filing complaints and that it was appropriate to add the party in this case. It awarded compensation for lost wages, lost benefits, and interest. The Board also held that it had the power to award aggravated damages in an appropriate case for physical and mental distress caused by the harassing behaviour. It awarded the Complainant $1,500 in aggravated damages.

4. David Duncan vs Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA)

Chair: Ken Chapman

David Duncan, a retired geophysicist, sought admission to "life membership" in APEGGA. APEGGA's constitution provided that applicants for life membership must be age 65 or over. Mr. Duncan filed a complaint alleging that he was discriminated against in occupational membership because of his age, contrary to section 10 of the IRPA. A Board of Inquiry was appointed in November, 1990. The parties reached a settlement prior to the commencement of the hearing.

5. Zujewskyj vs University of Alberta

Chair: Ken Alyluia

Professor Oleh Zujewskyj filed a complaint of age discrimination alleging that he was required to retire upon reaching the age of 65. The complaint was held in abeyance pending the outcome of litigation in the similar complaint of *Olive Dickason vs University*, *infra*.

6. Contenti vs Thong Pham and Gold Seats Inc. operating as Super Seats

Chair: K. Richmond, Chair; S. Murphy; Dr. Z. Philip

Lonie Contenti, secretary and receptionist at a Calgary car upholstery business, filed a complaint of sexual harassment with the Commission in August of 1989. A Board of Inquiry was appointed October 8, 1991. The hearing set for December 1991 has been adjourned to May of 1992.

7. Rayanne McCoubrey vs Alberta Blue Cross

Chair: John T. McCarthy, Q.C.

In November 1989, Rayanne McCoubrey filed a complaint of marital status discrimination in employment. She had been forced to leave her work as the Calgary office supervisor for Blue Cross, because her common law partner (and prospective spouse) was also employed by Blue Cross in Calgary. A board of Inquiry was appointed February 5, 1992.

COURT PROCEEDINGS

A decision of a Board of Inquiry may be appealed to the Courts. Following are cases in which the Commission has been involved in Court proceedings during the reporting period.

1. Alberta Human Rights Commission vs Central Alberta Dairy Pool

(Supreme Court of Canada)

Jim Christie filed a complaint in May, 1983 alleging that he was discriminated against on the basis of his religious beliefs when he was terminated for failing to come to work on a busy production day, to observe a holy day of his religion. A Board of Inquiry upheld the complaint and held that the employer had a duty to accomodate Christie's religious requirements. It ordered compensation for lost wages.

The employer appealed. The Court of Queen's Bench in 1986 overturned the Board of Inquiry decision. It held that the employer's work schedule was a bona fide occupational requirement ("BFOR") of Christie's job and therefore the termination was lawful. On further appeal by the Commission, the Court of Appeal upheld the Court of Queen's Bench decision. The Commission sought and was granted leave to further appeal to the Supreme Court of Canada. The appeal was heard on October 13, 1989.

On September 13, 1990 the Supreme Court of Canada issued its decision unanimously allowing the appeal and restoring the order of the Board of Inquiry. The majority held that this was a case of *adverse impact*, or indirect, discrimination. The defense of bona fide occupational requirement does not apply to cases of adverse impact discrimination. In such cases the employer has a duty to reasonably accomodate the employee's religious beliefs, up to the point of undue hardship. No argument of undue hardship was possible in this case because the employer had made no efforts to accomodate. A concurring minority held that although the BFOR defence applies to cases of adverse impact discrimination, a rule will not be a BFOR if individual accomodation was a reasonable alternative to the blanket rule. In this case, the employer did not establish that individual accomodation was impractical.

In deciding *Central Alberta Dairy Pool*, the Court overturned in part its own decision of *Bhinder vs Canadian National Railway*, decided five years previously. Since its release, *Central Alberta Dairy Pool* has been regularly cited by courts and tribunals and has been the subject of much academic comment.

2. Dr. Olive Dickason vs Governors of the University of Alberta

(Supreme Court of Canada)

Professor Olive Dickason filed a complaint of age discrimination with the Commission alleging that she was required to retire upon reaching the age of 65, in accordance with the University's Policy and the collective agreement with its Academic Staff Association. A Board of Inquiry (K.J. Alyluia) in 1987 upheld the complaint and reinstated Dr. Dickason. The University appealed the decision to the Court of Queen's Bench.

In October, 1988 the Court of Queen's Bench issued its judgment upholding the Board of Inquiry. It held that the "reasonable and justifiable" defence under section 11.1 of the IRPA should be interpreted by analogy to the similar defence in section 1 of the Canadian Charter of Rights and Freedoms. It held that although the objectives of the mandatory retirement policy were valid, the policy did not significantly advance those objectives and the policy was so disproportionate to the ends it sought to accomplish. The policy was therefore not "reasonable and justifiable" under section 11.1. The University further appealed to the Court of Appeal. On agreement of all parties the appeal was held in abeyance pending the Supreme Court of Canada's decisions on mandatory retirement of university academic staff under the Charter.

In December, 1990 the Supreme Court of Canada released its Charter mandatory retirement decisions in *McKinney vs University of Guelph* and three other cases. It upheld mandatory retirement of university academic staff on the ground, among others, that the Charter did not apply to universities; but if it did, mandatory retirement would be a reasonable and justified limitation on professors' rights.

The Court of Appeal heard the University's resumed appeal. On August 14, 1991 it issued its decision allowing the appeal. It held that the Supreme Court's decision in *McKinney* bound it to reach the same conclusion in Dr. Dickason's complaint unless there were significant factual differences, and such differences were not apparent. On December 12, 1991, Dr. Dickason received leave to further appeal to the Supreme Court of Canada. The Court stayed Dr. Dickason's retirement pending its decision on her appeal. Several other professors sought and obtained injunctions from the Court of Queen's Bench staying their retirement pending the Supreme Court's decision in *Dickason*: see *Buck et al vs University of Alberta, infra*.

At the close of the reporting period, Dr. Dickason's appeal to the Supreme Court of Canada was scheduled to be heard on May 5, 1992.

3. Alexandra Vinogradov vs University of Calgary

(Court of Appeal)

Alexandra Vinogradov complained to

the Commission that she had been discriminated against by the University on the basis of her gender in not being considered for a tenured appointment. A Board of Inquiry was appointed and a lengthy hearing was held. In July, 1988 the Board issued a decision dismissing the complaint. The Commission and complainant each appealed. The Commission discontinued its appeal in December, 1988. The complainant's appeal was dismissed by the Court of Queen's Bench in February, 1989. The Court of Queen's Bench denied leave to appeal the Board of Inquiry decision. The complainant appealed this disposition to the Court of Appeal.

The Court of Appeal heard Dr. Vinogradov's appeal in May, 1990. On September 6, 1990 the Court dismissed Dr. Vinogradov's appeal on the ground that it raised issues of fact or mixed fact and law for which no leave to appeal had been granted; and that on such an issue one may not appeal a denial of leave to appeal.

4. Joseph Bugis vs University Hospitals Board

(Court of Appeal)

Dr. Joseph Bugis, a specialist physician, complained that he had been denied active staff privileges with the University Hospitals because of his age, 65. He had previously been retired from the active staff pursuant to a "mandatory retirement" provision in the Hospitals' Medical Staff Bylaws. A Board of Inquiry was appointed.

The Board of Inquiry stated two questions of law for the opinion of the Court of Queen's Bench: (1) whether the relationship between Dr. Bugis and the hospital was one of "employment"; and (2) whether the complaint, filed more than six months after Bugis was first retired, was timely in view of the limitation period in the IRPA. The Court of Queen's Bench answered "no" to both questions.

The Commission and complainant appealed to the Court of Appeal. The appeal was heard on May 9, 1990. On May 16, 1990, the Court issued its decision dismissing the appeal. It held that the physician-hospital relationship between Bugis and the Hospitals was not one of "employment" within section 7 of the IRPA. Accordingly the Commission had no jurisdiction to process the complaint. In light of this conclusion, the Court did not have to decide the issue of the time limitation.

5. Adrian Watters vs Co-operators General Insurance Company

(Alberta Court of Appeal)

In June, 1988 Adrian Watters filed a complaint of discrimination in public services on the basis of gender against Co-operators for offering auto insurance coverage to young male drivers at substantially higher premiums than young female drivers. A Board of Inquiry after six days of evidence and argument issued a decision in February, 1990 upholding the complaint and ordering Co-operators to cease the practice. The Board found that the practice constituted discrimination on the basis of gender contrary to section 3 of the IRPA and that the practice was not "reasonable and justifiable" under s. 11.1 of the IRPA. Co-operators appealed to the Court of Queen's Bench.

By agreement of the parties, the order of the Board of Inquiry was stayed until twelve months after the ultimate disposition of the case. This was done because the order against Co-operators will have industry-wide implications for insurers' rating practices if it is upheld. The twelve months' delay will if necessary allow time for the industry regulators to effect managed change to industry rating practices.

On May 1, 1991, the Court of Queen's Bench issued its decision dismissing the appeal and upholding the decision of the Board of Inquiry. It held that the differential premiums offered by Co-operators constitute prohibited discrimination and that the practice is not saved by section 11.1 of the IRPA. The broad availability of private auto insurance in a financially-sound industry are objectives of sufficient importance to warrant a denial of protected rights. Gender-based rating for young drivers, however, does not impair the right to be free from gender discrimination as little as possible in light of the evidence of other rating variables that may be used and other jurisdictions where "genderless" auto insurance is delivered in a competitive and profitable insurance market.

Co-operators appealed further to the Court of Appeal. The appeal had not been scheduled at the close of the reporting period.

6. Alberta Hospital Association and Red Deer General & Auxiliary Hospital and Nursing Home, District No. 15 vs Susan Parcels, Alberta Human Rights Commission and United Nurses of Alberta, Local 2

(Court of Queen's Bench)

The Alberta Hospital Association and Red Deer Regional Hospital appealed portions of the Board of Inquiry decision in *Parcels, supra*. It appealed the Board's finding that a pregnant employee does not waive benefits entitlement for the entirety of her maternity leave by commencing leave before a health-related condition justifying absence exists. Second, it also appealed on the issue of employer use of Supplemental Unemployment Benefit (SUB) plans. Federal SUB Plan regulations limit the combined Unemployment Insurance and employer payments to an employee absent from work to 95% of regular salary. The AHA and

Hospital sought a declaration that payment of the maximum 95% of salary under a SUB plan, instead of 100% of salary payable under sick leave, does not contravene the IRPA.

The appeal was heard on March 16-18, 1992. The Court's decision was pending at the close of the reporting period.

7. Ontario Human Rights Commission and Bates vs Zurich Insurance Company

(Supreme Court of Canada)

During the reporting period the Alberta Human Rights Commission was granted leave by the Supreme Court of Canada to intervene in this appeal. The case involves a complaint challenging the legality of differential auto insurance premiums based on age, gender and marital status. The appeal raises the interpretation of a defense under the Ontario Human Rights Code for insurance practices based on "reasonable and bona fide grounds." The Commission intervened in the *Bates* appeal because of its implications for the interpretation of defence sections in the IRPA and the similarity of some issues to those raised in the *Watters* litigation .

The appeal was argued before the Supreme Court of Canada on November 5, 1991. The Court's decision was pending at the close of the reporting period.

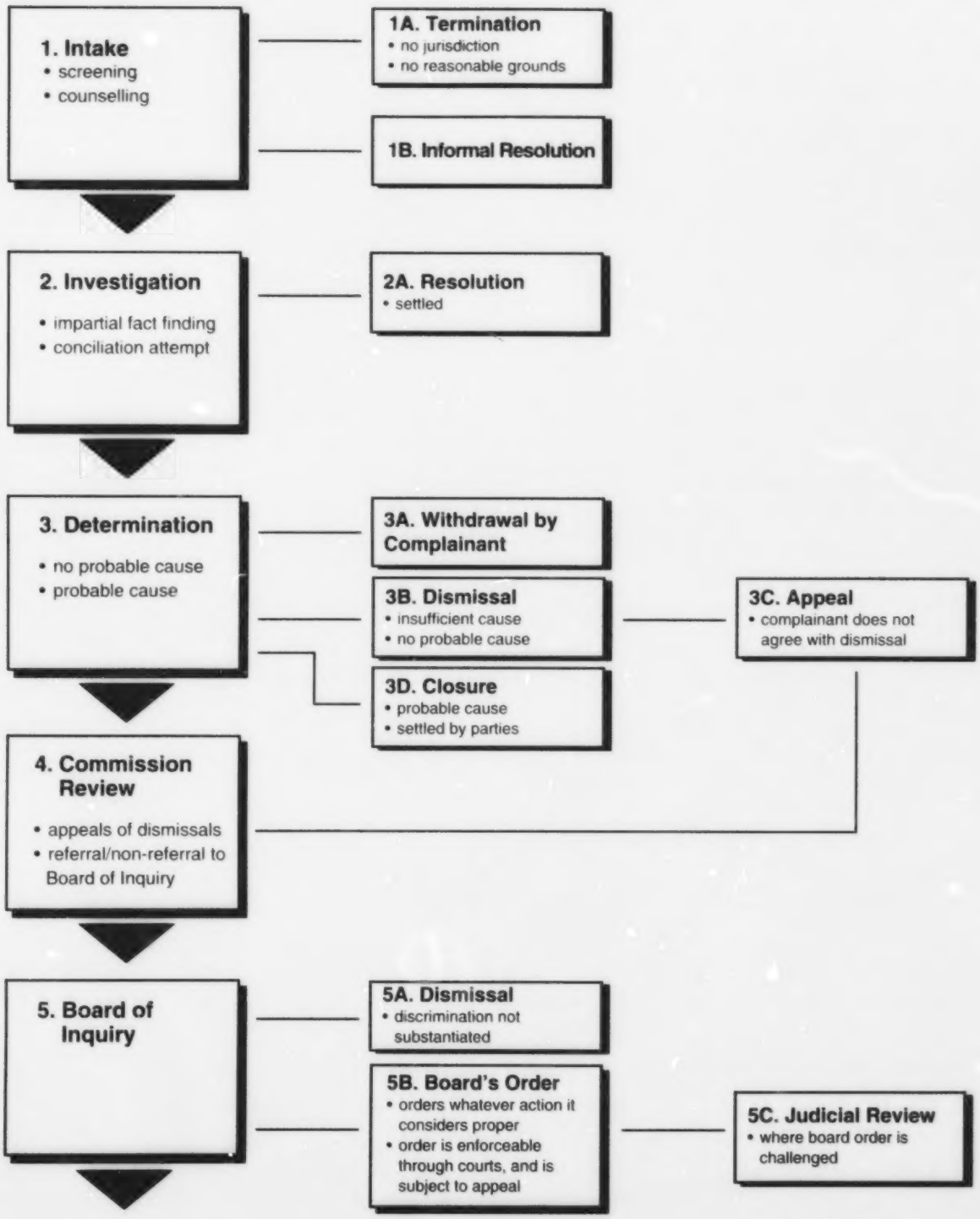
8. University of Alberta vs Robert Buck et al.

(Court of Appeal)

After the Alberta Court of Appeal allowed the University's appeal in the *Dickason* case, *supra*, the University indicated its intention to retire several professors who reached the age of mandatory retirement while *Dickason* was before the Courts. The Supreme Court of Canada stayed Dr. Dickason's retirement when it granted her leave to appeal. It could not stay the retirement of other professors because the original Board of Inquiry decision in *Dickason* had not ordered the University to cease applying its mandatory retirement policy generally. Accordingly, Dr. Buck and several other faculty members sought an injunction from the Court of Queen's Bench prohibiting their forced retirement until the Supreme Court of Canada decided *Dickason*. The Court granted the injunctions. The University appealed to the Court of Appeal.

The Commission sought and was granted leave to intervene in the appeal. The Commission intervened to support the proposition that a Court may issue an interim injunction to prevent an alleged breach of the IRPA pending resolution of a human rights complaint, even in the absence of any lawsuit before the Court. On March 6, 1992 the Court issued its decision. It held that a Court does have the authority to grant such an injunction. It upheld these injunctions on the basis that the balance of convenience favoured allowing the professors to remain employed pending the result of *Dickason*.

COMPLAINT PROCEDURE



COMMISSIONERS

Fil Fraser, Chief Commissioner
June 1, 1989
to June 1, 1992

Fil Fraser, born in Montreal, Quebec, is a well-known broadcaster, communications consultant, writer and film producer. His 40-year career includes radio and television broadcasting in Ontario, Quebec, Saskatchewan and Alberta, newspaper publishing, educational television programming, substance abuse education, and film-making.

He is the founder of organizations promoting and establishing the Alberta and Canadian film industry. He is Governor Emeritus of the Banff School of Fine Arts and Honourary Director of the Banff Television Festival. In 1978 he was awarded an Alberta Achievement Award and in 1985, the Alberta Human Rights Commission presented him with a special media award for his contributions in promoting human rights.

Mr. Fraser was a member of the Spicer Commission on National Unity. In 1991, he became a member of the Order of Canada.

Shirish Chotalia
November 23, 1989
to December 1, 1993

Ms Chotalia, B.A., LL.B., LL.M., a lawyer, practices in the areas of constitutional and human rights litigation and immigration law. She holds a Master of Laws degree from the University of Alberta, while her undergraduate degree was in English. She has received many academic and service distinctions.

She presently serves on the Canadian Bar Association Gender Task Force (headed by Bertha Wilson) and has served various humanitarian causes and organizations such as the Canadian Red Cross Society, Edmonton Immigrant Services Association, service organizations for persons of differing abilities, and the Lessard Community League.

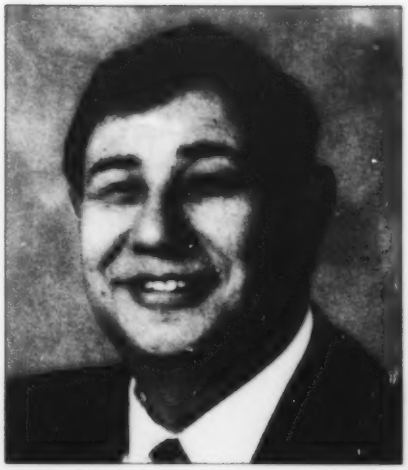
Ms. Chotalia also has extensive media experience, having served as an anchorwoman on Shaw Cable for seven years.

Dr. Raffath Sayeed
November 23, 1989
to December 1, 1993

Dr. Sayeed, a family physician, moved from Madras, India and has lived in Lloydminster, Alberta since 1976. He practises at Lloydminster Hospital and is president of the hospital's medical staff. He is also a member of the Canadian Association of Sports Medicine and is physician to Lloydminster's Junior 'A' hockey team.

Other volunteer activities include: supernumerary RCMP constable; president of the Saskatchewan Association of Rehabilitation Centres; member of the Board of Directors of the Canadian Association For Community Living; member of the Lions Club; a Freemason; and is a founding member of the Lloydminster rowing club, in which he is still an active member.

Dr. Sayeed is a past member of the Council of College of Physicians and Surgeons of Saskatchewan from 1986 to 1988; past chairman of the Bea Fisher Centre — a centre for adults with mental disabilities; and was a member of the Minister of Education's Consultative Committee for Tolerance and Understanding.



Ron Scrimshaw, Ed.D.
November 23, 1989
to December 1, 1993

Dr. Scrimshaw is Manager of Community Relations and Technical Training for the Alberta Gas Transmission Division of NOVA Corporation of Alberta. His involvement in Native affairs and corporate affairs is extensive and varied. From 1975 to 1979 he was the Director of Mount Royal College, Old Sun Campus/Old Sun Community College on the Blackfoot Reserve.

Dr. Scrimshaw served as Chairman, Minister of Advanced Education and Manpower's Advisory Committee on Native People's Education and the Alberta Curriculum of Student Evaluation Policy Board. He was a member of the Minister of Education's Consultative Committee on Tolerance and Understanding, and of the University of Calgary Senate. He has been a member of a number of Alberta and Saskatchewan Native organizations.

Dr. Scrimshaw holds an Ed.D. degree in Higher Educational Administration from Brigham Young University, Provo, Utah.

Edna Short
January 1, 1986
to December 31, 1989
(First Term)
December 21, 1989
to January 1, 1992
(Second Term)

Edna Short completed her second term with the Alberta Human Rights Commission in January, 1992.

Mrs. Short has lived in Red Deer since 1962 where she has been involved in the business community and in a number of community service organizations. She is the former director of the Red Deer Chamber of Commerce, past chairperson for the Red Deer Tourist and Convention Board, and has served as a member of the City of Red Deer Economic Development Board.

Mrs. Short has been a member of the Girl Guides of Canada for 30 years, having served at the provincial level as area commissioner, Parkland area. She has been a campaign director with the Red Deer and District United Way and continues to hold a director's position with the United Way.

Alaine Skoreyko
February 16, 1989
to February 1, 1993

Alaine Skoreyko was the recipient of the 1988 Alberta Human Rights Award. The award is given out annually to an Albertan for outstanding achievement and leadership in support of human rights in the province.

Mrs. Skoreyko retired from teaching in 1987 after 23 years of service. While still a teacher, she founded The Society for the Prevention and Elimination of Discrimination and Stereotyping, (SPEDS). It is an educational program designed to foster an awareness and acceptance of social and cultural differences. The program was officially accepted as a resource unit by the Calgary Board of Education in 1986.

Mrs. Skoreyko is currently a partner in Foothills Educational and Psychological Services, and is a member of several community organizations. These include: the Calgary Canadian Citizenship Council, Citizens Against Racial and Religious Discrimination (CARRD), Alberta Association for Multicultural Education (AAME), Interculture Canada, the Alberta Teacher's Association, Multicultural Education Committee, Kappa Delta Pi and the Calgary Canadian Council of Christians and Jews.

ANNUAL HUMAN RIGHTS AWARD

Del Iannucci
January 26, 1989
to January 1, 1994

Mr. Iannucci moved to Canada from Italy with his family in 1957. He holds a B.A. (Honours) in Urban Geography from the University of Toronto and a Masters degree in Urban and Regional Planning from Queen's University in Kingston, Ontario. Since 1982, Mr. Iannucci has been residing in Calgary, where he is currently an urban/community planning and land development consultant.

He is past president of the Alberta Chapter of the National Congress of Italian Canadians (N.C.I.C.) and served two terms as third vice-president of the N.C.I.C. National Executive. Mr. Iannucci is also the former program co-ordinator for the Calgary Multicultural Centre. He has held executive and advisory positions with a variety of community organizations including Big Brothers of Calgary, the Kinsmen Club of Calgary and the Calgary Italian Club.

Mr. Iannucci is currently chairman of the Calgary Committee to Promote Good Citizenship and since 1988 has been president of Calgary's Canada Day committee. Mr. Iannucci was appointed vice-president of the Alberta Provincial Canada committee and is serving a third term.

Ron Ghitter, Q.C., was presented with the Alberta Human Rights Award on December 10, 1990. The award is given annually to an individual for outstanding achievement and leadership in support of human rights in Alberta.

Mr. Ghitter, who introduced the IRPA in the Alberta legislature 20 years ago, was born in Calgary and raised and educated in Edmonton. He received a law degree from the University of Alberta in 1959 and began to practice law the next year in Calgary. In 1971, he was elected to the legislature as the MLA for Calgary Buffalo. He was re-elected in 1975. In 1978, he received his Queen's Counsel appointment.

Mr. Ghitter is a past Chairman of the Minister's Consultative Committee on Tolerance and Understanding, a former Chairman of the 1988 Winter Olympic Arts Festival, and a past Executive Vice President of Trizec Corporation. Currently, he is the President of Ron Ghitter Property Consultants in Calgary, a director of the Calgary Beautification Foundation, and a director of the International Centre for Human Rights and Democratic Development.

Ron Ghitter, Q.C.

The 1991/92 winner of the Alberta Human Rights Award was Dr. Elizabeth Crump-Dumesnil. Dr. Crump-Dumesnil was honoured for introducing intercultural teaching techniques to the provincial educational system, setting in place an appreciation of diverse cultures in school curriculums.

She has worked with the Edmonton Catholic School District as an intercultural education consultant since 1986. She teaches half- time as a high needs resource teacher, working with students who, because of socio-economic and/or cultural problems, may be more likely to drop out of school.

Nomination forms for the Alberta Human Rights Award are available from the Commission offices or by calling the Commission's toll-free number. Individual submissions are also accepted and should include: the name, address, and telephone number of the nominee; the name, address and telephone number of the nominator; a description of the work and achievements that, in your opinion, qualifies the nominee for the award; and, documents in support of the nomination.

Dr. Elizabeth Crump-Dumesnil

STATISTICS

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SUMMARY

STATISTICS	1990/91	1991/92
COMPLAINTS RECEIVED	539	509
PREVIOUS YEAR COMPLAINTS CARRIED OVER	166	262
COMPLAINTS HANDLED	705	771
TOTAL CLOSURES	443	392
INFORMAL CLOSURES	348	290
(A) Settled	241	194
(B) Discontinued	107	96
FORMAL CLOSURES	95	102
(A) Settled	58	59
(B) Dismissed	1	3
(C) Withdrawn	34	37
(D) Commission Dismissal	2	2
(E) Commission Termination	0	1
COMPLAINTS CARRIED OVER	262	379

BREAKDOWN OF TOTAL COMPLAINTS FOR PROVINCE 1990-91 AND 1991-92

1990 – 1991	SIGN. NOTICE	SERVICES	TENANCY	EQUAL PAY	EMPLOYMENT	ADVERTISEMENT, APPLICATION, INTERVIEW	OCCUPATIONAL MEMBERSHIP	INSTRUCTION	TOTAL	PERCENTAGE OF TOTAL
Race/Colour	9	31	19	0	60	5	0	2	126	21.6
Gender	0	13	2	3	169	11	0	0	198	
(Pregnancy)	0	2	0	0	60	0	0	0	(62)	33.9
(Sexual Harassment)	0	6	2	0	73	0	0	0	(81)	
Physical Disability	0	23	9	0	54	6	0	0	92	15.8
Age	0	0	0	0	44	13	2	1	60	10.3
Ancestry, Place of Origin	9	8	3	0	15	5	2	0	42	7.2
Marital Status	0	0	0	0	6	10	0	0	16	2.7
Religious Beliefs	7	4	1	0	4	1	1	1	19	3.3
Mental Disability	0	9	4	0	17	0	0	0	30	5.2
Total	25	88	38	3	369	51	5	4	*583	
Percentage of Total	4.3	31.1	6.5	0.5	63.3	8.7	0.9	0.7		100
1991 – 1992										
Race/Colour	0	22	11	0	39	1	0	0	73	13.6
Gender	0	16	3	7	187	3	0	2	220	
(Pregnancy)	0	5	1	0	87	0	0	0	(93)	40.9
(Sexual Harassment)	0	3	0	0	66	0	0	2	(71)	
Physical Disability	0	33	5	0	56	5	0	2	101	18.8
Age	0	1	0	0	50	8	0	1	60	11.1
Ancestry, Place of Origin	0	3	3	0	14	1	1	0	22	4.1
Marital Status	0	0	0	0	10	4	0	0	14	2.6
Religious Beliefs	1	5	1	0	14	1	1	0	23	4.3
Mental Disability	0	8	1	0	17	1	0	0	25	4.6
Total	1	89	24	7	387	24	2	5	*538	
Percentage of Total	0.2	16.4	4.5	1.3	71.9	4.5	0.3	0.9		100

* Some complaints include more than one ground.

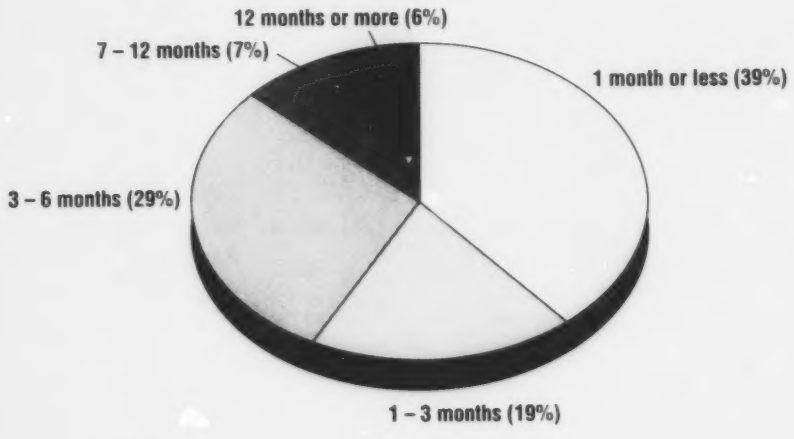
STATISTICS

CASE CLOSURE TIME STATISTICS

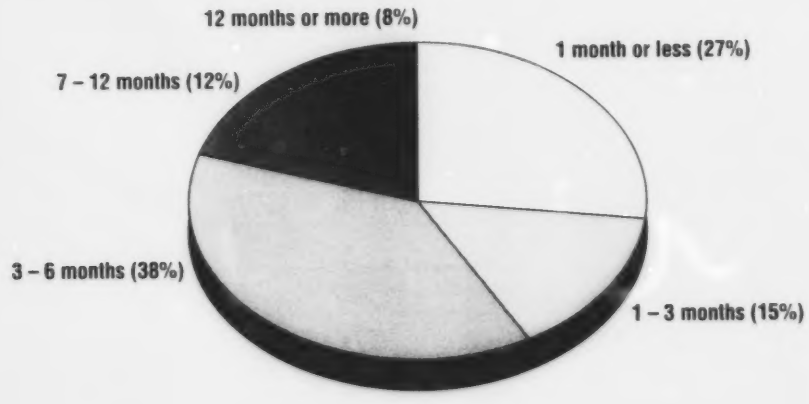
	90/91	91/92
TOTAL CASES CLOSED	443	392
Settlements	299	253
Total monetary settlements	$152,113.00	$265,546.00

Note: Settlements also included letters of apology, reinstatement of jobs, and agreements by respondents to cease acts of discrimination.

AVERAGE TIME TO HANDLE COMPLAINTS CLOSED IN 1990-91



AVERAGE TIME TO HANDLE COMPLAINTS CLOSED IN 1991-92



Note: Time required to conclude cases may include time required for Boards of Inquiry or judicial decisions.

STATISTICS

COMPLAINTS BY PROHIBITED AREAS OF DISCRIMINATION

Signs and Notices

1990-91	4.3%	
1991-92	0.2%	

Services

1990-91	51.1%	
1991-92	16.4%	

Tenancy

1990-91	6.5%	
1991-92	4.5%	

Equal Pay

1990-91	0.5%	
1991-92	1.3%	

Employment

1990-91	63.3%	
1991-92	71.9%	

Advertisement, Application, Interview

1990-91	8.7%	
1991-92	4.5%	

Occupational Membership

1990-91	0.9%	
1991-92	0.3%	

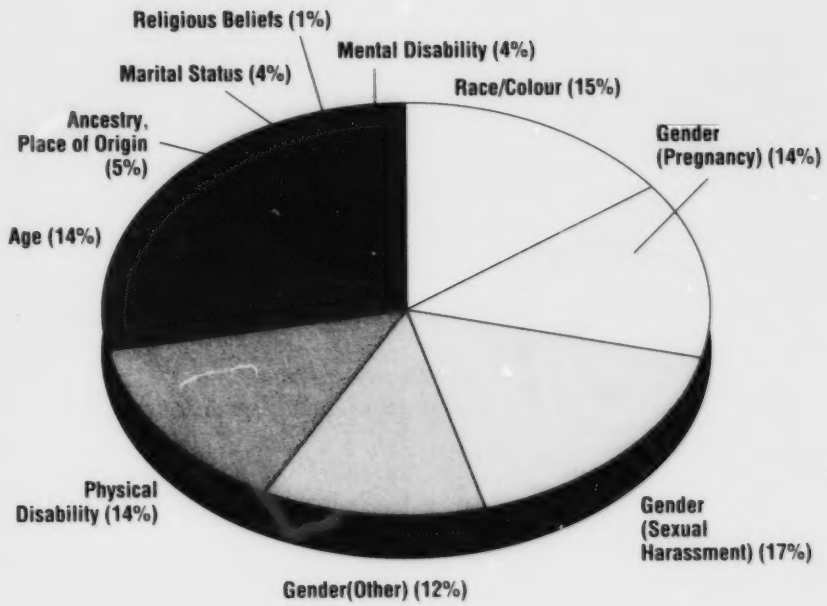
Retaliation

1990-91	0.7%	
1991-92	0.9%	

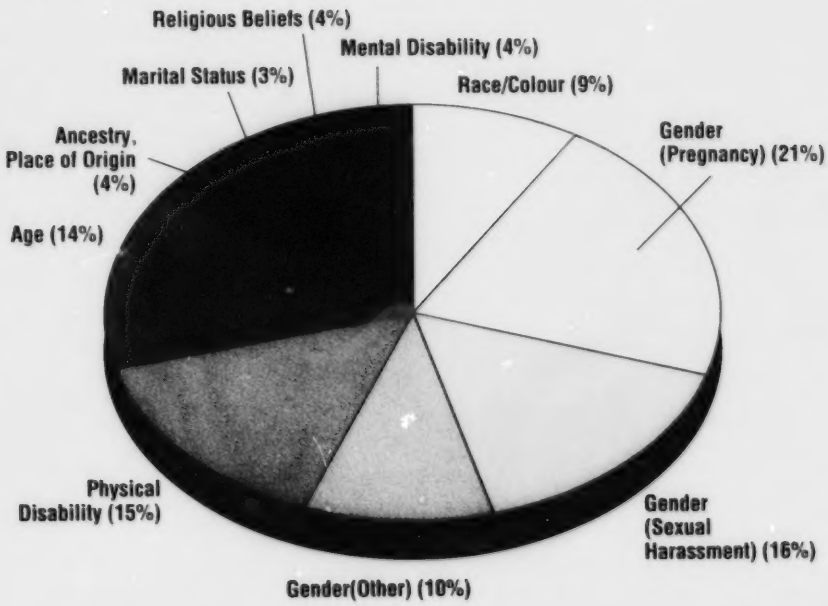
STATISTICS

EMPLOYMENT RELATED COMPLAINTS BY GROUND

1990-91

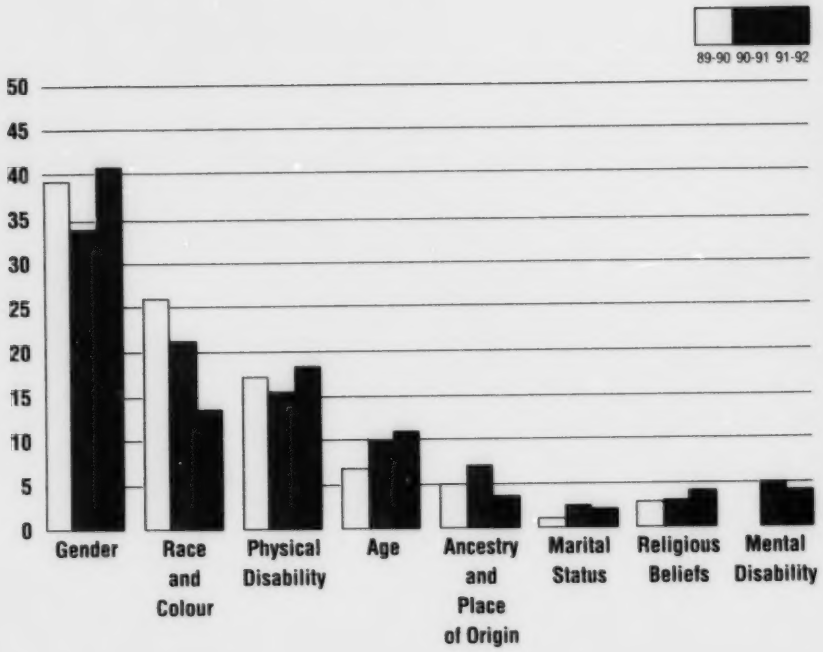


1991-92



STATISTICS

PERCENTAGE OF THE TOTAL NUMBER OF COMPLAINTS CONSTITUTED BY EACH OF THE EIGHT MAJOR PROHIBITED GROUNDS OF DISCRIMINATION



Ground	1989-90	1990-91	1991-92
1 Gender	39.4%	33.9%	40.9%
2 Race and Colour	26.1%	21.6%	13.6%
3 Physical Disability	17.4%	15.8%	18.8%
4 Age	7.0%	10.3%	11.1%
5 Ancestry and Place of Origin	5.4%	7.2%	4.1%
6 Marital Status	1.5%	2.7%	2.6%
7 Religious Beliefs	3.2%	3.3%	4.3%
8 Mental Disability	—	5.2%	4.6%

Nakoda Declaration

We, the members of the Alberta Human Rights Commission, are committed to uphold the dignity of every Albertan. From time to time derogatory pins, calendars and other offensive materials have surfaced.

In response, we declare:

These materials degrade, dehumanize and hurt identifiable Albertans. They are wrong.

The distributors of these materials, for financial gain, exploit the fears of some Albertans. They will continue to look for new groups to exploit.

We believe that most Albertans are generous of spirit and do not want to hurt their neighbours. When we do not speak out we condone these harmful materials by our silence. We urge Albertans to speak out.

We commend the many Albertans who have already spoken out. We particularly commend newspaper editorial writers for consistently supporting human rights principles.

Alberta, as a member of the global community which has welcomed the world on many occasions, cannot tolerate these attitudes.

We believe that we are better and stronger when we treat each other with respect and dignity.

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